

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, April 12, 2006, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Gene Carroll, Michael Cornelius, Dick Esseks, Gerry Krieser, Roger Larson, Mary Strand, Lynn Sunderman and Tommy Taylor. Ray Hill, Mike DeKalb, Brian Will, Steve Henrichsen, Joe Rexwinkle, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Jon Carlson called the meeting to order and requested a motion approving the minutes for the regular meeting held March 29, 2006. Motion for approval made by Carroll, seconded by Krieser and carried 9-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson Strand, Sunderman and Taylor voting 'yes'.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

April 12, 2006

Members present: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Strand, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 06017, SPECIAL PERMIT NO. 1866B, SPECIAL PERMIT NO. 06019, COUNTY SPECIAL PERMIT NO. 06020, SPECIAL PERMIT NO. 06022 and STREET AND ALLEY VACATION NO. 05010.**

Ex Parte Communications: None.

Item No. 1.3, Special Permit No. 06019; Item No. 1.4, County Special Permit No. 06020; and Item No. 1.5, Special Permit No. 06022, were removed from the Consent Agenda and had separate public hearings.

Taylor moved to approve the remaining Consent Agenda, seconded by Strand and carried 9-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Strand, Sunderman and Taylor voting 'yes'.

Note: This is final action on Special Permit No. 1866B, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

COUNTY SPECIAL PERMIT NO. 06020
FOR A VETERINARY FACILITY
ON PROPERTY GENERALLY LOCATED
AT NORTH 84TH STREET AND BRANCHED OAK ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 12, 2006

Members present: Strand, Sunderman, Larson, Carroll, Krieser, Cornelius, Taylor, Esseks and Carlson.

Staff recommendation: Conditional Approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing due to a letter in opposition.

Additional information submitted for the record: Mike DeKalb of Planning staff submitted a letter from Steve Nordstrom in opposition with concerns about traffic, the close proximity to his farm operation, runoff, commercial development in the county, and a question about taxes.

Proponents

1. **Ed Stich** presented the application. He and his wife purchased this land because his daughter and son-in-law are equine veterinarians looking for an opportunity to do specialized reproductive work in a rural location in Nebraska. This facility is being approached from a farming standpoint because it was originally to be a breeding operation but they decided to build it properly and meet the code requirements regardless of what jurisdiction it would fall under.

The applicants contacted all of the surrounding landowners and ended up receiving about 15 calls, which were all positive.

In response to the letter in opposition, Stich advised that he is a part-time farmer, certified to apply private restricted chemicals. He will be farming the other 146 acres of this land and the prevailing winds will be from the south and west. He will be spraying the same kinds of crops and using the same kinds of chemicals as other farm operations and he is not concerned. He stated that this property borders the Nordstrom property for about 200 yards at the most. The Nordstrom property also has a windbreak to the east to cut the east wind even more. Stich does not believe this will present a problem for Mr. Nordstrom.

As far as runoff concerns, there will be no external ponds. The possibility exists that they will run a sewage system that is compatible with whatever the requirements are for human waste. There will be no animal waste outside the facility. If so, it would be dry solids that would be spread on the land. This will be a family operation.

2. Pat McIntire(sp), currently a resident of upstate New York, originally from Falls City, Nebraska, who will operate this facility, testified in support. He and his wife have chosen this area because southeast Nebraska and northeast Kansas have a real deficiency in equine reproductive services. His wife is board certified and a specialist. Lancaster County is specifically in need of reproductive services and equine services in general. There is a reproductive specialist in Omaha that has recently stopped doing the services because there was so much business and was suffering from burn-out. This specific location has been chosen because the applicants do not believe this type of facility is suitable in a commercial zoned area. Horses that need to be shipped in and out of facilities are coming in trailers and those trailers are hard to maneuver inside of city limits and busy streets. In addition, horses are not comfortable in environments like that. This type of facility belongs in a rural setting.

McIntire also informed the Commission that he and his wife are both farm-raised Nebraskans and empathetic to the needs of farmers. They understand the special needs that farmers have and they have every intention of being good neighbors.

With regard to traffic, the reproductive timeframe in horses is basically in the spring and summer, with their busiest time of year being March through July. He projects that at the most there would be eight to ten trucks or trailers per day over an eight or nine hour period during the busiest times of the year.

Carroll inquired whether the facility will include a small animal clinic. McIntire answered in the affirmative. They do plan to provide small animal services and market those to their equestrian clients that have other small animals. There will be small animal exam rooms and surgical facilities, and kennels for housing sick patients. There will be some exterior runs for turnout of animals.

Opposition

1. Mick Minchow, who farms adjacent ground to the south, testified in opposition. He pointed out that SHD2 soil is a 5-9% slope. The applicant purchased the steepest part of the quarter section. He farms the 80 acres to the south and he is in the process of getting applications to the respective agencies to clean out the waterway that runs through their property. He will be cleaning out the trees and putting in a dam. If this veterinary facility would grow at all, he does not want the dam that he builds to be the sewage lagoon for that facility. Minchow suggested that the applicant should pick the flattest part of the farm upon which to build this facility. He believes it should be located someplace where the runoff can be better controlled and take it away from the neighbor's fence line.

Staff questions

Esseks inquired whether the county and/or the state have regulations which would protect the farmer to the south. DeKalb answered in the affirmative, but it will be a matter of degree. Both City-County Health and Nebraska DEQ have regulations relative to pollution and runoff control. Complaints could be made to the City-County Health Department, Nebraska DEQ and, if appropriate, the EPA. Esseks wondered whether there has been any experience with such problems in the county. DeKalb does not believe there have been problems which have gone to that level. For example, with hog and cattle feedlots, there are permit requirements. He is not aware of any problems on the smaller level that have occurred, plus he pointed out that farmers can have small breeding operations that may not qualify as a feedlot.

Esseks inquired whether there are any county regulations regarding runoff of animal waste. DeKalb advised that the only regulations would be those of the City-County Health Department. There is nothing in the zoning code.

Response by the Applicant

Mr. Stich responded to the opposition, stating that the location is the top of the hill; it is level; it slopes slightly to the neighbor to the east; and it drains ½ mile before it reaches anyone else. He also assured that they will utilize a sewage system that has zero runoff, and if it has runoff, it will be clean water that one can drink. He does not like lagoons, and they will go the extra step to guarantee that this will be clean fresh water. He could not guarantee that the runoff from the farm ground will be clean fresh water. The system he is looking at for disposal of waste (Nayadic) has EPA requirements 4-5 times stricter than Nebraska. He assured that they will not be bad neighbors. The neighbor does not need to worry about runoff.

Strand wondered about adding a condition of approval that the applicant agrees to install a system that takes care of the animal waste. Stich suggested that there is a little difference in disposal of equestrian waste because of their digestive system. The EPA looks at that differently because it is very fibrous and he understands that it can still be spread on the surface as most other manure. He is pretty sure they can guarantee that the runoff from this facility will be basically zero, or almost clean water on the basis of the sewage system. DeKalb suggested that all water and wastewater is required to meet the requirements of the City-County Health Dept. Therefore, the waste disposal system will need to be an approved system. If there is an issue with animal waste, it would be referred to DEQ. DeKalb does not believe the conditions should limit it to a specific system. He believes that the conditions of approval in the staff report cover the concern.

ACTION BY PLANNING COMMISSION:

April 12, 2006

Taylor moved to approve the staff recommendation of conditional approval, seconded by Carroll and carried 9-0: Strand, Sunderman, Larson, Carroll, Krieser, Cornelius, Taylor, Esseks and Carlson voting 'yes'. This is a recommendation to the Lancaster County Board.

SPECIAL PERMIT NO. 06022
FOR A GARDEN CENTER
ON PROPERTY GENERALLY LOCATED
AT SOUTH 14TH STREET AND SALTILLO ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 12, 2006

Members present: Strand, Sunderman, Larson, Carroll, Krieser, Cornelius, Taylor, Esseks and Carlson.

Staff recommendation: Conditional Approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing at the request of the applicant.

Proponents

1. Mark Hunzeker appeared on behalf of the applicant and submitted a proposed amendment to the conditions of approval as follows:

2.1.1.1 A setback of 100' on all sides for buildings and parking.

Hunzeker noted that there is a statement in the Analysis referring to a 50' setback being required from all exterior lot lines. The site plan submitted shows a 100' setback for all buildings and parking. There was a "minor disconnect" between what the applicant intended and what was understood by staff. The applicant and the staff both agree that the buildings and parking need to be set back 100' and this amendment clarifies that the 100' setback applies only to buildings and parking and not to nursery materials.

Mike DeKalb of Planning staff agreed with the proposed amendment to the conditions of approval.

Opposition

1. Thomas Burns, 10955 S. 14th Street, which is right next door to this property, testified in opposition. His main concern is the traffic on 14th Street and any chemical spraying or

anything else that might leak into the groundwater. There are five houses in this area and they all have their own wells. He is wondering what kind of runoff will be involved with the plant material. 14th Street is getting busier and he is concerned about how much more traffic will be involved.

Staff questions

Esseks asked staff to response to the opposition. DeKalb suggested that the impact on the traffic, etc., will depend on the success of the business. A garden center permits the sale of material grown on the premises, shipped in materials and motorized equipment. Esseks asked DeKalb whether he could recall any situation whereby the operation of a nursery led to contamination of the groundwater. DeKalb did not know of any such situation, but he understands the concern. The old Campbells site was surrounded by residential and he is not aware that there was such an issue. Complaints can be directed to the City-County Health Department, DEQ or EPA.

Taylor wondered whether there are any conditions of approval about runoff. DeKalb suggested that the Commission can always add conditions, but he suggested that they not because there are enough other regulations in place.

Carlson inquired as to the staff's position about putting a commercial enterprise on the other side of these acreages. DeKalb's response was that the whole intersection is going through some transformation with industrial across the street, Rod's Outdoor, Shoemakers Truck Stop on the south side, and material storage for gasoline on Saltillo Road. He viewed this proposal as more of an agricultural-related use. Carlson wondered whether staff anticipates further commercial development to the north. DeKalb indicated that it is not planned for but he anticipates that it will occur.

Response by the Applicant

Hunzeker pointed out that one of the criteria for siting a garden center is that it be located on a future arterial street. The applicant has worked with the Planning Department for six to eight months on this particular location. The only reason for the special permit is to allow for the sale of things other than plants, rocks and dirt. All of the agricultural type use of the property is permitted as a matter of right. The only reason for the special permit was to build a building that allows you to sell the pots, the hoses and sprinklers, etc. They did have some earlier discussions about the potential of adding some minor ancillary type services such as equipment rental for acreages, i.e. mowers or the like, and staff did not want to make that amendment at this time. The agricultural aspect is a matter of right and all the other types of horticultural uses are permitted under the AG zoning district without the special permit. And they are subject to all the regulations that apply to the application of any chemicals. For purposes of this application, Hunzeker suggested that the focus on the potential use of chemicals on the site is misplaced. The focus should be on the purpose of the special permit, which is to provide the additional services and products.

ACTION BY PLANNING COMMISSION:

April 12, 2006

Taylor moved to approve the staff recommendation of conditional approval, with the amendment to Condition #2.1.1.1 as requested by the applicant, seconded by Carroll and carried 9-0: Strand, Sunderman, Larson, Carroll, Krieser, Cornelius, Taylor, Esseks and Carlson voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

**SPECIAL PERMIT NO. 06019,
FOR A COMMUNITY CENTER
ON PROPERTY GENERALLY LOCATED
AT N.W. 84TH STREET AND HIGHWAY 55.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 12, 2006

Members present: Strand, Sunderman, Larson, Carroll, Krieser, Cornelius, Taylor, Esseks and Carlson.

Staff recommendation: Conditional Approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing.
Proponents

1. Luke French testified in support as the applicant. There is a need for a community center in Malcolm. He has been in contact with the schools and the parking lot for this facility will be available for the kids as a meeting place. Right now, they have been meeting at the school. The parking lot will be lit with security cameras.

2. Patty French, mother of Luke French, testified in support. She stated that they have always done everything as a family. Luke's boys are the 5th generation who live on the property. The building will be used and run by the family as much as possible. They had thought about using it as a farmer's market, i.e. some way to get the people together, to do things together and have a way to dispose of their items. They have also thought about water conservation. It will have either a lagoon or septic system. There will be no water runoff. Her son and his family will be living on the property at the top of the hill.

Opposition

1. Steve Schmalken, 8600 W. Hwy 34, Malcolm, testified in opposition. When people hear "community center", they think of some place like a gym or rec center, but when you start saying reception, it turns into a banquet or reception hall. He listed seven other like facilities that are located within a three-mile radius that are church or privately owned, some with liquor licenses. He also disagrees that the location should be described as Hwy 55. It is actually

Spur 55. It is in the northwest part of the county. He is concerned about traffic. This is in the Malcolm Public School District. The drawing shows that it is 80' from the edge of the road – not from the ditch, which actually puts it within 20' of the ditch line. The spur runs at an angle and if there is parking up to the edge of that parking lot, it will obstruct traffic coming from the west from Malcolm. Traffic coming into Malcolm comes off Hwy 34 at the rate of 55 mph. There is a turn in that spur which is blind to that intersection. He is with the Malcolm Fire Department and an EMT firefighter and he has responded to numerous accidents on that corner. Schmalken pointed out that the parking lot is for 120 cars. He has a problem with that much traffic at that intersection. That intersection does not have a lot of reaction time.

Schmalken also expressed concern about the facility not having a liquor license because they will not be responsible for people that are drinking on the property. As it is, and the way he understands it, liquor can be brought into this facility and consumed, so there will be no one supervising the consumption of alcohol.

Schmalken lives just south of the proposed facility. He is worried about 120 cars, the capacity of 200 people, with no noise barriers between the community center and the road. There is nothing that says that they cannot put up tents or that they cannot have a festival. They are already talking about a farmers market, all of which will produce noise outside of the facility. He is worried about the sewer and the shock load to any kind of a system of 200 people, and then a down period, and then another 200 people coming in to use the facility. He was an operator/owner of Grandpa Johns which had a below ground septic system – there is no way to guarantee zero odor.

With regard to drainage, Schmalken understands that this facility is supposed to conform to the city regulations. The parking is supposed to be paved, and that will add to the drainage problem. Within the last six years there have been three storm events where the water has run over Spur 55. Pavement in this parking lot will just add to the drainage problem. There is no way to contain it on the property the way it is proposed. The county and state had to blade the mud off of the spur.

2. Jerry Perry, who owns property bordering on the east side of the proposed facility, testified in opposition. Water runoff is a concern. The mud goes across the road and cars end up in the ditch. She is concerned about the parties being allowed in the parking lot. What about the concerns with the experimental explosives they have experienced at the school recently?

Staff questions

Esseks noted that this is a permitted special use in the AG district. Does that mean that if the conditions are met, the owners have a right to the permit? DeKalb suggested that to be more of a legal question but the City Attorney was not present. The purpose of the special permit provision is for a unique use that is specifically reviewed with public hearing to see if the proposed use fits the location. Reasonable conditions can be added to reach that level. If the Commission is not comfortable with the conditions, it can be denied.

Esseks inquired whether there is any precedent regarding the consumption of alcohol on such premises. DeKalb stated that the only other community center special permit that he recalls was for the Dave Chambers parcel out by Arnold Heights, where wedding receptions were held, etc., and there were no particular liquor related conditions attached to that special permit.

Carlson asked for an explanation of the difference between “community hall” versus a “banquet hall”. DeKalb does not believe there is a difference. “Community hall” is the term used in the zoning ordinance and it may function as a banquet hall. There is no specific distinction for banquet hall.

Strand asked staff to respond to the road conditions, the accident rate and mud slides. DeKalb advised that the staff did attempt to get comments from other agencies. The County Engineer indicated that they will approve the access point. The County Engineer also indicated that they want to improve the road and that they intend to have the applicant regrade the road from point of access to the intersection. The Planning Department did not receive a response from the Department of Roads or County Sheriff. As far as the mud slides, no one raised this issue in their comments. As far as runoff from farm operations, the Department of Road and County Engineer will go back to the property owner to correct any problems because it is not a proper occurrence.

Strand confirmed that anybody in AG zoning can get a special permit anywhere within a farming community. DeKalb concurred, suggesting that anyone within the city’s 3-mile jurisdiction in the AG district could apply.

Esseks believes that this is a strange use for AG areas. Is there a justification for having this? DeKalb’s response was that the provision is in the code and they have asked for it. Dave Chambers had made the justification with his application that there was a need in the community outside the city to provide for this particular type of use and the City Council agreed and put the provision in the code.

Response by the Applicant

Mr. French stated that he has talked to the Liquor Commission about a catering license but he has not yet applied for it. He ran a liquor store at 27th and South for 12 years and he had no violations in those 12 years. He has three teenagers growing up and he will not allow kids to congregate and drink in the parking lot.

He offered to change the parking lot to whatever size it needs to be and whatever the setbacks need to be. He is willing to make whatever changes are necessary to make it work. 200 cars would be the maximum. And there will not be 200 cars at every occasion. Most of the time, the cars would be coming and going and would not all be there at one time.

As far as the mud problem, French believes that the county or state just purchased the whole strip and redid that buffer zone. If the mud is coming out, it is further down toward Malcolm.

French also reiterated that he will be living on the property. If there is a party or function going on at the hall, he will supply the bartending service. If it is a Thursday night where the kids might congregate, it will just be a parking lot and they can come and go as they want. We are trying to find a place for the kids to get away from the school. The recent problem referred to by the opposition was a firecracker on school property. There is nothing planned for the children to do at that parking lot. He has talked with the church and the firemen and offered that they may use of the facility at no cost. There will be surveillance cameras mounted outside and inside.

Strand assumes that once a special permit is granted, it cannot be taken away. If there were problems with alcohol or trash and debris or other problems, can a special permit ever be revoked? DeKalb indicated that a special permit can be reconsidered if the permittee is in violation of the permitted conditions. Strand wondered about adding a condition that security cameras will be installed inside and outside and that there will be no litter or pollution. DeKalb suggested that the Commission could add reasonable conditions. If security cameras were made a condition and were not installed, that would be potential violation of the special permit. Same with the litter issue.

French pointed out that the Liquor Commission has something to say about it, too. A liquor or catering license can be revoked. Strand is concerned about people renting the hall and bringing in their own coolers and kegs of beer.

Carlson expressed further concern about allowing kids to come there. He thinks it is germane in terms of how the hall will be administered. He understands having events but he is not understanding the rationale for offering a place for the kids to go. French's response was that there is no place for the kids to go. Now they meet at the school and decide where to go from there. The school does not want them up there. The school is installing cameras as well. Carlson suggested that giving the kids a place to congregate unsupervised may be a bad idea. French suggested that if something happens, he'll put up a gate and they won't be able to go there. He is not promoting it as a "hang out" – he is just attempting to help the school find a solution.

Esseks commented that when he thinks of the concept "community center", he thinks of centers like we find here in Lincoln which serve a multiple purpose for young people to gather, but they are supervised. What will be the nature of the supervision? French suggested that if it's going to be a problem, he'll just go ahead and install a gate now. Esseks believes there could be dangerous consequences without supervision. The applicant must agree to supervision of a professional nature; otherwise, he is uncomfortable voting for this special permit. French stated that if it needs to be supervised, he just won't allow it. The focus of the special permit is a hall for gatherings for birthdays, anniversaries, graduations, etc. Esseks stated that he would have to insist upon a condition that there be no unsupervised gatherings of minors. French would agree but he does not know how one would control that. He doesn't see it any different that a McDonald's parking lot where kids might meet. He reiterated that the control will be by cameras, but he agreed not to allow it if the Commission sees it as a problem.

Cornelius brought the focus back to the purpose of the special permit, which is the community hall, not the gathering point for the students. French concurred, and commented that maybe it was not a good idea on his part to allow kids in the parking lot and he would agree to put up a gate. Regardless, they need to somehow resolve the gatherings at the school.

Cornelius inquired as to the nature of the problems they are seeing at the school. French stated that there is drinking going on because you see the beer cans; and they have even been talking about kids having sex on the football field. The school is going to install cameras. If the kids can't go there, where are they going to go? French does not want those problems, either, but he was just offering to find a place for the kids to go. This whole thing was not about the parking lot. That is not the focus of this special permit.

ACTION BY PLANNING COMMISSION:

April 12, 2006

Carroll moved to approve the staff recommendation of conditional approval, seconded by Strand.

Esseks made a motion to amend that there be no gatherings of minors unless supervised by an adult, seconded by Carlson.

Carlson was interested in adding language that the facility will only be used for rental functions. The conditions already limit the hours of operation. If they want to donate the rental time, it needs to be used for an activity.

Esseks noted that on the record, we have information that illegal activities are going on at the high school and it sounds like they would be shifted to this parking lot.

Carroll suggested that the motion to amend require that a gate be installed and that the facility be locked unless it is being used for an official function. Esseks agreed and revised his motion to amend accordingly, seconded by Strand.

Motion to amend, as revised, carried 9-0: Strand, Sunderman, Larson, Carroll, Krieser, Cornelius, Taylor, Esseks and Carlson voting 'yes'.

Strand moved to amend that the owner of the community center will be responsible for litter that may be created, seconded by Esseks. Carroll believes that there are litter regulations that bind the owner now without making it a specific condition of approval. DeKalb concurred. There are litter laws and liquor license laws that obligate the permittee to control the litter. Enforceability would be an issue if it were made a condition of approval. Strand withdrew the motion to amend, and Esseks, who had seconded the motion to amend, agreed.

Main motion for conditional approval with amendment to require the gated entrance, carried 9-0: Strand, Sunderman, Larson, Carroll, Krieser, Cornelius, Taylor, Esseks and Carlson voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

CHANGE OF ZONE NO. 06018
TO AMEND TITLE 27 OF THE
LINCOLN MUNICIPAL CODE TO DEFINE
“TREE SERVICE” AND TO CREATE A
SPECIAL PERMIT PROVISION IN THE
AG AGRICULTURAL DISTRICT.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 12, 2006

Members present: Strand, Sunderman, Larson, Carroll, Krieser, Cornelius, Taylor, Esseks and Carlson.

Staff recommendation: Denial.

Ex Parte Communications: None.

The Clerk announced that the applicant has submitted a revised application, deleting subparagraph c) from proposed new Section 27.63.770 as follows:

~~c) — On a minimum lot area of twenty acres so long as such use complies with the height, setback and area regulations of the AG district.~~

Proponents:

1. **Charlie Humble**, 301 S. 13th Street, presented the proposal on behalf of Mike and Lynn Price, who currently operate a tree service on South 14th Street, and, innocently enough, ran afoul of the regulations of the AG district, receiving a notice from Building & Safety. Due to this violation, the applicants have been diligently searching for a new location containing approximately 10 acres, which, in most cases, puts them into industrial zoned sites for their business and they were unable to find a new location.

The applicants met with the staff and explained the tree service business. They need about 10 acres of land; there would be buildings for their equipment and trucks; the employees come to the site, pick up the trucks and equipment from the buildings and then go out and do the tree service business off-site, returning afterwards to return and store the equipment overnight. They need land to store some wood. There is no activity performed on-site. About twice a year, they will employ a tub grinder to grind up the materials that are stored, but under the code they have to meet the noise ordinance.

Humble further advised that in working with staff, the staff indicated that it would be a good idea and acceptable if the applicants would basically transition an existing site, and that was their original intent. Subparagraph c) under the new section 27.63.770 was included as a “fudge factor” in case his clients could not find such a site. That language would potentially open up other areas in the AG zoning for potential business.

Then Humble advised that the applicants subsequently found an 11-acre site that is presently the subject of a special permit for nursery purposes. It works very well and they will transition

it to a very similar use. Therefore, Humble revised the application to remove subparagraph c). He believes this will change the staff recommendation to approval.

Humble also advised that the owners would like very much to be able to live on the premises as the caretaker and therefore would have more control over the premises. There will be no retail sales on the premises. The City Council may require additional screening or buffering. The text amendment provides the opportunity to apply for a special permit. Humble believes this text amendment falls within the economic opportunity provision of the Comprehensive Plan, which indicates that unique site requirements of a business may necessitate consideration of other suitable and appropriate locations in the county. By revising the application to eliminate subparagraph c), it deletes the potential expansion of business in the AG district.

Mike DeKalb of Planning staff agreed that the staff recommendation changes to approval with the elimination of subparagraph c).

Opposition

1. Thomas Burns, 10955 S. 14th Street, testified in opposition to the existing location of the tree service, which is behind his house on S. 14th Street. There is noise from the trucks starting up in the mornings. He does not like the idea of stumps being piled up to be ground down twice a year. He submitted photographs of what the tree service looks like from the back of his property, showing wood within 30' of his property; the trucks are not stored in buildings; it is not aesthetically pleasing for Hwy 77 traffic; and he already has a problem with water coming down off of Hwy 77. He does not want this business to be allowed to continue at its current location. He is concerned about the mulch and mud washing down onto his land.

Staff questions

Carroll noted that the new location has a nursery special permit. He asked how a nursery special permit would be different than the proposed tree service special permit. DeKalb suggested that it is sort of a matter of degree in a continuum of things. He would not expect a nursery to be grinding up trees. There would be no retail sales on-site.

Carroll does not understand why this is necessary if they have found a site with a nursery special permit. DeKalb stated that the tree service operation would not fit under the definition of a nursery today. The staff had taken the position that the tree service might be considered a contractor's yard with dump trucks, etc., more of a business characteristic. DeKalb further explained that the applicants have received a zoning violation citation at their current location so they are looking for a new site. This text amendment was to provide them the opportunity to locate by special permit and staff is taking the position of supporting a location in a prior commercial area. DeKalb also noted that the applicants have applied for a special permit for an existing area on South 68th Street.

Carroll clarified that the proposed text provides that the new site must be an existing commercial use. DeKalb concurred.

Esseks observed that, in all fairness to the surrounding property owners, the replacement commercial use should be no more intolerable or unpleasant than the existing use. He also observed that the text amendment would allow tree services throughout the county. He does not believe this is an agricultural enterprise. He suggested that the county should try to find a place for businesses like this. Are there alternative options? DeKalb's response was that the staff believes that this type of business fits more into a contractor's yard circumstance.

DeKalb also reiterated that the applicants have submitted an application for a special permit for a tree service at a different location, based on approval of this text amendment. That application is scheduled on the April 26th Planning Commission agenda.

Response by the Applicant

Humble clarified that the site which the applicants have under contract is five miles east of their current location.

Mike Price, the applicant, responded to the pictures shown by the opposition. He explained that he is currently renting that property. Knowing that they are going to be leaving that site, they have not ground up the materials because it will be easier to move them first. He also stated that they want to have their residence at the new location so they will keep it cleaned up and looking nice.

Taylor inquired about commercial uses on the site. Price clarified that he does not sell products on the site. All of the mulch, fire wood, etc., is loaded up and hauled out. They do not allow the public to come in and buy anything.

Humble pointed out that the text amendment specifically prohibits retail sales on site.

Larson inquired as to how soon the applicant would move to the new site if this is approved. Price indicated that he is hoping to be moved by the end of June. He will clean up the current site.

ACTION BY PLANNING COMMISSION:

April 12, 2006

Strand moved approval, as revised by the applicant, seconded by Larson.

Esseks stated that he will vote against this because he believes that the tree service industry is just not at all like agricultural enterprises that you find in AG areas. The amount of nuisance effect is so much greater that it belongs in an urban industrial area.

Carlson indicated that he is sympathetic to Mr. Esseks' argument. But the special permit provision provides the opportunity to determine whether it is a good exchange. That may give him enough comfort to support the motion.

Taylor agreed with Esseks. It appears that we are setting a precedent by creating this text amendment.

Motion for approval, as revised, carried 6-3: Strand, Sunderman, Larson, Carroll, Krieser and Carlson voting 'yes'; Cornelius, Taylor and Esseks voting 'no'. This is a recommendation to the City Council.

** Break **

Commissioner Taylor left at this point in the meeting.

COMPREHENSIVE PLAN AMENDMENT NO. 06002

AND

WAIVER NO. 06002

ON PROPERTY GENERALLY LOCATED AT

84TH & ROKEBY ROAD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: April 12, 2006

Members present: Strand, Sunderman, Larson, Carroll, Krieser, Cornelius, Esseks and Carlson; Taylor absent.

Staff recommendation: Approval of Option A on the Comprehensive Plan Amendment, if the property owners agree to fund the sanitary sewer costs associated with adding the additional area, or approval only of Option B if the applicants are the only properties willing to fund the improvements; and approval of the waiver for the area included in the Comprehensive Plan Amendment, with a developer agreement to pay for the cost of over-sizing the sanitary sewer.

Ex Parte Communications: None.

Steve Henrichsen of Planning staff requested an additional two-week delay, announcing that the sewer study was completed yesterday. The staff is hopeful to be prepared to address these items on April 26th.

Strand moved to defer two weeks, with continued public hearing and action scheduled for April 26, 2006, seconded by Sunderman and carried 8-0: Strand, Sunderman, Larson, Carroll, Krieser, Cornelius, Esseks and Carlson voting 'yes'; Taylor absent.

There was no other testimony.

CHANGE OF ZONE NO. 06012
FROM R-2 RESIDENTIAL DISTRICT
TO B-1 LOCAL BUSINESS DISTRICT,
ON PROPERTY GENERALLY LOCATED
AT S. 10TH STREET AND VAN DORN STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 12, 2006

Members present: Strand, Sunderman, Larson, Carroll, Krieser, Cornelius, Esseks and Carlson (Taylor absent).

Staff recommendation: Approval, subject to a conditional zoning agreement.

Ex Parte Communications: None.

Additional information submitted for the record: Joe Rexwinkle of Planning staff submitted three letters in opposition to the uses that would be allowed, the possible impacts on traffic and expansion of commercial uses into a residential area. The two letters from representatives of the Irvingdale Neighborhood Association do share some praise for the applicant in regard to the deferral and meeting with the neighbors last night.

Proponents

1. Mark Hunzeker appeared on behalf of **B&J Partnership**, the owner and applicant. This site is between 9th and 10th from Hill to Van Dorn, and since the time it was originally developed as residential, it has changed considerably. The lots along Van Dorn were zoned B-1 quite some time ago, with two lots to the north of those then zoned O-2. It has had commercial uses on the corner. The block is now largely vacant with a couple of remaining residential uses, and generally, the applicant agrees with the staff's analysis. The applicant also agrees that not all the uses permitted in B-1 are necessarily appropriate for this site, and that the northern part of the site ought to serve as a transition from commercial to residential. Therefore, the applicant has agreed to restrictive uses on the northern lots to uses that would be permitted in the O-2 district. The O-2 district was created specifically to replace what we used to call transitional lots, which were special permitted uses of an office type that were allowed next to commercial zoning like B-1, for the very purpose of providing a transition from commercial to residential uses. This application makes that transition by restricting the uses on the northern lots to the O-2 district uses.

Hunzeker advised that the applicant worked with Planning and Public Works to develop the site plan. Public Works did not want there to be direct access to either 9th or 10th Street. The applicant's original desire was to have a two-way access in and out on both 9th and 10th in order to keep the access points on the major arterials. Public Works would not allow that because of the general policy which restricts access to arterials and traffic on those streets is traveling too fast to facilitate easy transition and access. The applicant will construct a 200' left turn lane on 10th Street to access the site from Hill Street and access through what will be

a vacated alley and widened to have two-way access off Hill Street. Going back out to 10th Street there will be a one-way drive that exits onto Hill Street back out to 10th Street. On 9th Street, there will be an access which will be a left turn in only, and it comes in at a very severe angle so that you cannot come back out and turn left onto 9th Street. The exit again will then be out to Hill Street, back to the stop sign and onto the one-way 9th Street. The applicant will extend a turn lane on 9th Street from Hill Street all the way down to Van Dorn to pick up where the existing turn lane is located.

The applicant is providing for setbacks on both 9th and 10th Streets between the property line and the parking lot to facilitate the required landscaping recently adopted. The applicant is also planning to create a berm in the excess right-of-way that exists along Van Dorn Street to provide a full screen for the parking and/or drive-thru aisle that runs along that side of the site.

On the Hill Street side, which is some concern to the two houses on the north side of Hill Street, there will be a 25' setback to the property line and another 17' from the property line to the curb, which will be landscaped, including probably some landscaping along one of the landowner's property. There is a heavy landscape screen along the south side of the house. That house will not be removed at this time. Over time, however, that residential property is likely to be incorporated into this site and the plan would be to then extend the restrictions on use to the additional lots in the future.

Hunzeker explained that the building is designed for multi-tenants, including a drive-thru coffee shop at the southeast corner of the site, exiting to the north. The site plan also provides for a drive-thru on the north side of the building for a potential sandwich shop- type tenant, although they do not have a tenant yet. That may not materialize. The roof lines have been varied to give the appearance of multiple structures. The signage will be very controlled. There will be no changeable copy signs. The only freestanding signs will be ground signs. They will use a mixture of brick and stone to break up the facade of the building, lending to the appearance of multiple structures.

Hunzeker also advised that the lighting will be of a cut-off type, using more poles, lower poles, and sharp cut-off fixtures. Hunzeker submitted a list of uses which will be prohibited and asked that the additional restrictions become part of the conditional zoning agreement, in addition to those uses listed in the staff report:

1. No automobile and vehicle sales, dealerships or lots.
2. No automobile and vehicle service stations and automobile body repair shops.
3. No tire stores and tire sales.
4. No convenience stores.
5. No gas pumps.

6. No self-service car wash.
7. No changeable copy or message center type signs. Free-standing signs shall be limited to ground signs only.
8. No lighting on north side of buildings abutting Hill Street. All exterior lighting shall utilize full cut-off fixtures.

The applicant met with the neighborhood last night and Hunzeker believes it was a very good meeting. He believes that Rexwinkle's characterization of the letters received from the neighborhood representatives was fair, but may have under-emphasized the positives in those letters. It is fair to say that given a magic wand and a wish to convert this property into anything, there would be a consensus amongst the neighborhood that this should be a park, but he believes that is unlikely. Generally speaking, the people who came to the meeting were very complimentary of the work the applicant has done on design, and if the property is to be commercial, the applicant has done a good job with the site and the building design.

Hunzeker also ensured that the applicant will meet with the neighbors again for their input on the final design of the buildings. The applicant has agreed to meet with the neighbors prior to any application for building permit. The applicant has also agreed to directly involve the neighbors in the final design of the landscaping of the site, especially along the Hill Street side. Hunzeker submitted a letter agreement which the applicant has sent to the neighborhood, committing to make those additional efforts prior to issuance of building permits.

Hunzeker further observed that this is a site which is hard to imagine would ever develop as residential. It has enough commercial zoning on it today where a piecemeal start could be made, but that is not the direction they want to go. The applicant would rather plan the entire site as opposed to piecemeal redevelopment of the site. There is heavy traffic on both 9th and 10th Streets and Van Dorn Street, and it is not going to go away. The types of tenants will not be those which attract trips from miles away. They are going to be small users who will live or die, survive or fail, on the traffic that exists on these streets today. Anytime you have a redevelopment project, the change that is involved involves some tradeoffs. Hunzeker believes that this represents a vast improvement over the site that exists today and that it is a good thing for this neighborhood and a good use for the property. Hunzeker requested that the Planning Commission recommend approval, adding the use restrictions as submitted today.

Carroll inquired whether the redesign of the Van Dorn intersection will affect this property. Hunzeker stated that it would not. That redesign does not affect the right-of-way here nor this site.

With the park across the street, Carlson inquired about the pedestrian traffic and how that will occur. Hunzeker understands that the pedestrian access along the south side of Van Dorn was not going to be there any longer, and that the access to the park would effectively be from

the north side of Van Dorn coming across 10th Street and coming to a point at the southwest corner of this site and crossing Van Dorn at that point. He agreed that it is not going to be the most pedestrian-friendly access to a park in town. There is an underpass under Van Dorn, but it is not particularly desirable for pedestrian traffic.

Carlson inquired whether this application creates a safe and friendly way for people to walk in or does that encourage them to go across Van Dorn Street? Hunzeker was not sure. If you follow the sidewalk around, there is a site entry on Van Dorn, one on 10th Street, one on Hill Street and one on 9th Street, thus this proposal has attempted to facilitate those walkways as the design standards now require, and he believes this application has done a fairly decent job of that on all four sides of the site.

Sunderman inquired about the use at the lower left of the site plan. Hunzeker pointed to the small island on the map and stated that an ATM will be located there.

There was no testimony in opposition.

Staff Questions

Carlson also inquired of staff as to the pedestrian motion at the 9th and Van Dorn Streets intersection, from the park to the commercial area. Rexwinkle concurred that the current sidewalk on the south side of Van Dorn may disappear with the redesign of the intersection. He explained the pedestrian movement on the map. He believes there are push-button pedestrian crossings at the intersection now.

Esseks inquired as to the Comprehensive Plan designation for this parcel. Rexwinkle stated that it is urban residential. Esseks wondered whether the Comprehensive Plan would need to be changed. Rexwinkle stated that the recommendation for approval is simply based upon the fact that this is such a small area of commercial use, and it is not realistic to expect some residential type of reinvestment at this intersection. Staff weighed that against the risk of leaving it vacant, which the staff believes would be more of a detriment to the neighborhood.

Cornelius commented that the walkways seem to pump the pedestrians into the oncoming traffic. Hunzeker agreed. That walkway should move south so that it lines up with the sidewalk that comes out westward from the west edge of the building. It might be possible to move one or two of the parking stalls to make that change.

ACTION BY PLANNING COMMISSION:

April 12, 2006

Larson moved approval, subject to a conditional zoning agreement, with amendment to include the additional use restrictions submitted by the applicant today, seconded by Strand.

Strand noted that the Commission has been looking at the changes on Hwy 2 and 9th and 10th Streets for the Long Range Transportation Plan and she believes it makes sense to look at changing the use of this land.

Larson agreed. Even though the site is designated urban residential, he does not believe there is going to be any residential development in that area.

Esseks commented that he is very impressed with the extent to which the applicant has work with the neighborhood association.

Motion for approval, subject to a conditional zoning agreement, as amended, carried 8-0: Strand, Sunderman, Larson, Carroll, Krieser, Cornelius, Esseks and Carlson voting 'yes'; Taylor absent. This is a recommendation to the City Council.

COUNTY CHANGE OF ZONE NO. 06003
FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL
and
COUNTY PRELIMINARY PLAT NO. 06001,
THE PRESERVE AT CROSS CREEK 2ND ADDITION,
ON PROPERTY GENERALLY LOCATED
AT S. 58TH STREET AND ROCA ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 12, 2006

Members present: Strand, Sunderman, Larson, Carroll, Krieser, Cornelius, Esseks and Carlson (Taylor absent).

Staff recommendation: Approval of the change of zone and conditional approval of the preliminary plat.

Ex Parte Communications: None.

The Clerk announced that the applicant has submitted a request for an additional two-week deferral.

Carroll moved to defer for two weeks, with continued public hearing and action scheduled for April 26, 2006, seconded by Strand and carried 8-0: Strand, Sunderman, Larson, Carroll, Krieser, Cornelius, Esseks and Carlson voting 'yes'; Taylor absent.

There being no further business, the meeting was adjourned at 3:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on April 12, 2006.